

JUL 2 3 38 PM '99 Federal Communications Commission DA 99-1311

DISPATCHED BY  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 99-246
Table of Allotments,	)	RM-9593
FM Broadcast Stations.	)	
(Winslow and Camp Verde, Arizona)	)	

NOTICE OF PROPOSED RULE MAKING

Adopted: June 23, 1999

Released: July 2, 1999

Comment Date: August 23, 1999

Reply Comment Date: September 7, 1999

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Desert West Air Ranchers Corporation ("petitioner"), permittee of Station KFMR(FM), Channel 236C, Winslow, Arizona, seeking the reallocation of Channel 236C from Winslow to Camp Verde, Arizona, as that community's first local aural transmission service. Petitioner stated its intention to file an application to specify the new community of license if Channel 236C is reallocated to Camp Verde, as requested.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part "Change of Community MO&O"*, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that the requested reallocation of Channel 236C to Camp Verde (pop. 6,243)<sup>1</sup> is mutually exclusive with its existing authorization as well as its modification application (File No. BMPH-990305IB) at Winslow (pop. 8,190).<sup>2</sup> Petitioner advises that operation from the site proposed in its

<sup>1</sup>Population figures reported herein were taken from the 1990 U.S. Census Reports.

<sup>2</sup>Petitioner originally identified the tower site for Station KFMR(FM) at coordinates 34-58-05 NL and 111-30-28 WL. However, in a supplement to its petition for rule making petitioner has specified coordinates at the site contained in its minor modification application for Station KFMR(FM) at coordinates 34-58-04 NL and 111-30-30 WL. The modification application proposes to move the KFMR(FM) tower site approximately 200 feet to a different tower within the same multi-tower site area.

modification application, will enable Station KFMR(FM) to deliver a 70 dBu signal over the entire community of Camp Verde.

3. In further support of the proposal, petitioner asserts that the requested reallocation of Channel 236C to Camp Verde will result in a preferential arrangement of allotments (Change of Community R&O at 4873), as it would provide a first local aural transmission facility to Camp Verde without removing the sole local service at Winslow.<sup>3,4</sup> Additionally, petitioner reports that as the proposal contemplates a very minor change in its transmitter site (approximately 200 feet), the predicted 70 dBu contour of Station KFMR(FM) will remain the same. Therefore, no white or grey area will be created nor will there be any service loss or gain.

4. Additionally, petitioner reports that Camp Verde is not part of any urbanized area and is a bona fide community for allotment purposes. In support of its claim of community status, petitioner advises that Camp Verde has an elected mayor, city council, and a town manager. Moreover, Camp Verde has its own Chamber of Commerce, fire department, post office, zip code and public library. It also contains its own public school system. Camp Verde also has a weekly and a semi-weekly newspaper. Numerous business entities are also located in Camp Verde, as are churches, financial institutions, lodging facilities, and health care facilities. Law enforcement is provided to Camp Verde residents by the marshal's and sheriff's departments.

5. In consideration of the information presented, we believe the proposal warrants consideration as the reallocation of Channel 236C from Winslow to Camp Verde could provide the latter community with its first local aural transmission service (priority three) whereas Winslow will retain local service from Station KINO(AM) (priority four). As Station KFMR(FM) does not intend to relocate its transmitter from the designated electronics site, the reallocation proposal will not result in any gain or loss areas.

6. Based upon the information presented, we will propose to reallocate Channel 236C from Winslow to Camp Verde, Arizona, and modify the petitioner's authorization for Station KFMR(FM), as requested. As the petitioner's modification request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 236C at Camp Verde, Arizona.

7. Channel 236C can be allotted to Camp Verde, Arizona, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules at the petitioner's specified site at coordinates 34-58-04 NL and 111-30-30 WL.

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<sup>3</sup>The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. (Co-equal weight is given to priorities (2) and (3).) Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

<sup>4</sup>Full-time Station KINO(AM) is licensed to Winslow.

8. In view of the above, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with regard to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Camp Verde, Arizona	--	236C
Winslow, Arizona	236C	--

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before August 23, 1999, and reply comments on or before September 7, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W.; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Mark N. Lipp, Esq.  
Scott C. Cinnamon, Esq.  
Shook, Hardy & Bacon  
600 14th Street, N.W.  
Suite 800  
Washington, DC 20005-2004

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other

parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

**FEDERAL COMMUNICATIONS COMMISSION**

**John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau**

**Attachment: Appendix**

## APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.